The New OMB A-76 Circular

Maryellen Lyons
Virtual Syscom Strategic Sourcing Acquisition Center of Excellence

Agenda

Revised OMB A-76 Circular

- The Changes
- The Players
- The Roles
- The Process

Bush Administration Impacts on A-76

President's Management Agenda

- **Objective:**
  - **Improve management and performance of Federal Government**
- **Five Government-wide Initiatives**
  1. **Strategic Management of Human Capital**
  2. **Competitive Sourcing**
  3. **Improved Financial Performance**
  4. **Expanded Electronic Government**
  5. **Budget and Performance Integration**

Comparison of Key Changes

Former Process

- Inherently Governmental definition: “activities that require….exercise of discretion in applying Government authority…”
- Timeframe – 2-4 years
- IRO Certification Required
- Direct Conversions Permitted
- Need not recompete after period of performance ends
- Appeal/ Protest period allowed
- Requires Post-MEO

New A-76 Process

- Inherently Governmental definition: “activities require the exercise of substantial discretion in applying Government authority…”
- Timeframe – 1 year
- Eliminates IRO
- Disallows Direct Conversions
- MEO must be recompeted at end of performance period
- Contest period permitted for standard competitions
- Hold Government to

OMB Circular A-76

New Format & Terms

Three-Page Circular with Attachments

- Attachment A – Inventory
- Attachment B - Public-Private Competition
- Attachment C - Calculating Public-Private Competition Costs
- Attachment D –Acronyms and Definition of Terms

Change to Key Terms:

NEW TERM	OLD TERM
Competitive Sourcing Official	**9.a. Official**
Standard Competition	**Cost Comparison**
Streamlined Competition	**Streamlined Cost Comparison, Direct Conversion**
Agency Performance	**In-house Performance**
Agency Tender	**In-house Offer**
Agency Cost Estimate	**In-house Cost Estimate**
Agency Tender Official	**MEO Certifying Official**
Fee-for-Service Agreement	**Interservice Support Agreement**
Public Reimbursable	**ISSA Provider**

OMB Circular A-76
Eliminated Requirements

- Direct Conversions
- Conditions permitting government performance of CAs
- Conditions permitting contract performance of CAs
- Requirements for competition of Interservice Support Agreements Requirement for MEO team to develop
  - **As-Is Organization**
  - **TPP**
  - **QASP**
  - **Transition Plan to contract or ISSA performance**
- Technical Leveling of MEO
- Independent Reviews
- Administrative Appeal Process
- Post-MEO Performance Review

Players in the Process

- **Competitive Sourcing Official (CSO)**
- **Agency Tender Official (ATO)**
- **Contracting Officer (CO)**
- **Performance Work Statement (PWS) Team Lead** more on PWS lead
- **Human Resources Advisor (HRA)**
- **Source Selection Authority (SSA)**

Role of the Contracting Officer (CO)

- **Inherently governmental agency official**
- **Comply with both the FAR and this circular**
- **Independent of the ATO, human resource advisor (HRA), and MEO team**
- **Member of the PWS team**

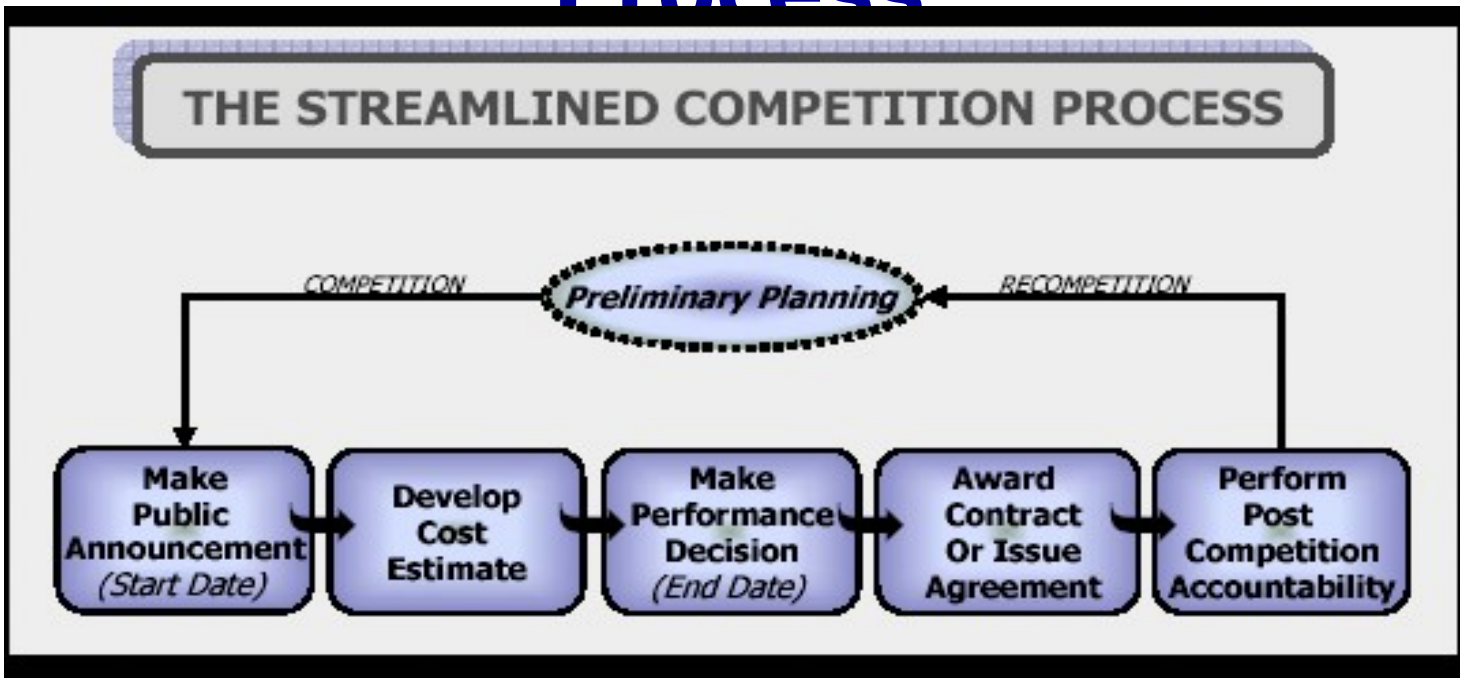
Initiating the Competition

- **Extensive Preliminary Planning required**
  - Establish scope & identify FTEs
  - Conduct research to determine appropriate grouping of activities (consistent with market and industry)
  - Asses availability of data to determine workload. Establish data collection systems as necessary
  - Establish baseline costs
  - Determine type of competition (i.e. streamlined or standard)
  - Set schedules
  - Determine roles and responsibilities of participants on study teams and ensure availability throughout duration of study
  - Appoint competition officials
    - **ATO, CO, PWS Team Lead, HRA, SSA**
  - Inform incumbent Service Provider of start date of competition

Initiating the Competition (cont.)

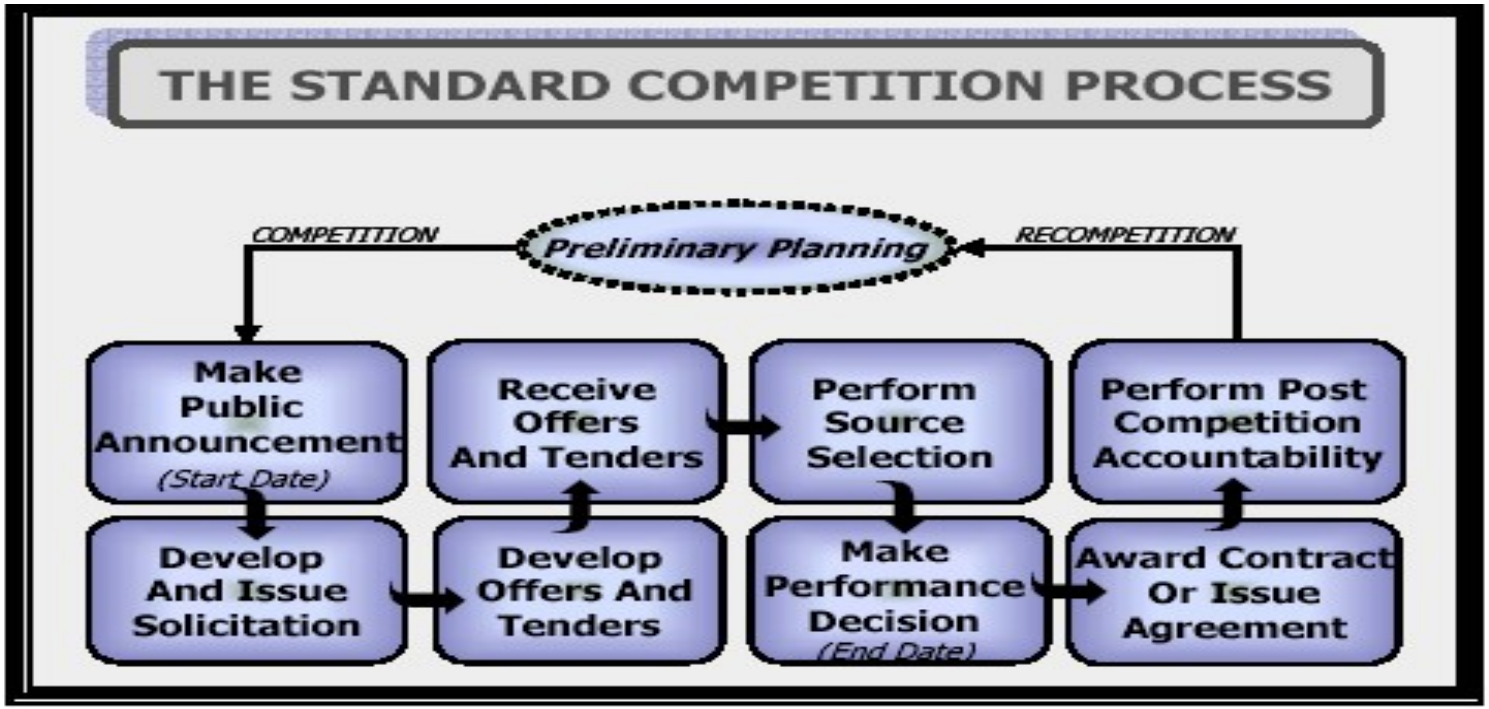
- **Public Announcement – All formal announcements made in *FedBizOpps.gov***
  - Start Date for each standard or streamlined competition
  - End Date (i.e. performance decision)
  - Cancellation of a Competition
  - Cancellation of a Solicitation

Streamlined Competition Process



- For competitions with **65 or Fewer FTEs**
- Cost of agency performance--may develop & cost MEO or base cost estimate on incumbent activity
- Cost of private sector/public reimbursable performance-may use market research or solicit cost proposals
- Total Process Time: **90 calendar days** from Announcement to to Performance Decision unless CSO grants waiver, in writing, prior to Public Announcement. Waiver only provides for an additional 45 calendar days, for a maximum of 135 calendar days to complete study
- Implementation
  - Private Sector Performance - CO may issue solicitation and award contract in accordance with the FAR
  - Agency Performance - CO executes a letter of obligation with an official

Standard Competitions



- Can be used for either 65 or fewer FTEs or over 65 FTEs
- Time Limit – 12 months from Public Announcement to Performance Decision unless CSO grants waiver for additional 6 months. Waiver must be granted prior to Public Announcement

Step One—Develop & Issue Solicitation

- **Performance Work Statement (PWS) Team**
  - Develop PWS including supporting workload data and performance standards
  - Determine Government Furnished Property
  - Develop Quality Assurance Surveillance Plan (QASP)
  - Assist in development of the solicitation
  - Assist in implementing performance decision

ABSOLUTE FIREWALL BETWEEN PWS and MEO TEAMS

Step One—Develop & Issue Solicitation (cont.)

Contracting Officer

- Determine acquisition strategy and source selection process
- Issue solicitation that includes all applicable requirements, provisions, periods of performance, and evaluation criteria
- State solicitation provisions unique to Agency Tender
  - **No labor strike plan**
  - **No small business strategy**
  - **No subcontracting goal**
  - **No requirement for small disadvantages business participation**
  - **Representations and Certifications not required**
  - **Past Performance not evaluated (unless MEO was implemented as result of previous study)**
- May post draft PWS or solicitation prior to formal issuance of solicitation

Source Selection Methods

- Sealed Bid
- Negotiations
  - Low price technically acceptable
  - Phased evaluation approach
    - Phase One
      - Offerors can propose performance standards at or above solicitation requirements
      - If alternate performance standards are appropriate and within budget, solicitation is amended to reflect change
      - All offerors have chance to revise proposal to meet new standard
    - Phase Two--Performance Decision based on cost/price realism
  - **Trade-off process**
    - Limited to IT, commercial activities performed by private sector source, new requirements, segregable expansions, or with Competitive Sourcing Official approval
    - Currently, 10 USC 2461 prohibits DOD conversion based on criteria other than lowest cost

Step Two—Develop Offers and Tenders

- **Most Efficient Organization (MEO) Team**
  - Assist ATO in the development of Agency Tender
  - Shall be comprised of individuals with expertise in management analysis, position classification, work measurement, cost analysis and the technical aspect of the activity under study
  - Directly affected employees may participate on the MEO Team
- **Agency Tender shall respond to requirements of solicitation, including Sections L & M**
- **Agency Tender will include:**
  - MEO
  - Agency's cost proposal
  - MEO's quality control plan
  - MEO's phase-in plan
  - Copies of any existing, awarded MEO subcontracts

Step Three—Receive Offers and Tenders

- **All Offers and Tenders due by solicitation closing date and time**
- **If ATO does not anticipate timely submission of Agency Tender, ATO shall notify Contracting Officer**
  - In consultation with CSO, CO shall determine if amending the closing is in best interest of government
- **Changes to Agency Tender after closing**
  - Solicitation Amendment
  - Request for final proposal revisions
  - Official changes to standard cost factors
  - WinCOMPARE software upgrades
  - Resolution of contest challenging performance decision

Step Four—Perform Source Selection

- **Private sector offers, public reimbursable and agency tenders will be evaluated at same time**
- **If CO determines that any offer or tender is deficient, the CO shall ensure that they receive a deficiency notice, with the opportunity to correct deficiencies**
- **If CSO determines that agency cannot correct deficiency with reasonable additional resources, the CSO may advise the SSA to exclude the agency tender from the competition**
- **If agency tender is excluded, reason for elimination must be documented on SCF**

Step Five—Make Performance Decision

- **Similar to current process**
- **10% conversion differential applies to incumbent service provider for standard cost comparisons. Not included in streamlined competitions**
- **Announcement of performance decision must be made at the local level and in FedBizOpps**
- **CO must offer a debriefing to all sources**
- **Appeals replaced by Contest**
  - During contest period, cost comparison information is only releasable to legal agents for directly interested parties
  - After contest period, the SCF is releasable, upon

Award Contract or Issue Agreement

- **Private Sector Provider**
  - Award Contract
  - Implement Right of First Refusal – HRA provides a list of directly affected employees to CO
- **Public Reimbursable Provider**
  - CO develops a fee for service agreement with public source
- **Agency Provider**
  - CO establishes an MEO letter of obligation with official responsible for the performance of the MEO

Contests

- **IAW FAR 33.103**
- **Only applies to standard competitions**
  - Solicitation
  - Cancellation of solicitation
  - Determination to exclude agency tender or offer from standard competition
  - Performance Decision
  - Termination of contract of letter of obligation
- **No party may contest ANY aspect of a streamlined competition**

Post Competition Accountability

- **Best Practices and Lessons Learned compiled and reported**
- **Execution Tracking – agencies to keep database that tracks execution of competitions through public announcement through last period of performance**
- **Competitive Sourcing Quarterly Report – report required at the end of each fiscal quarter**
- **Monitoring Performance – applies to both contracts and Agency Award**
- **Recompetition by the end of performance period. Limited exceptions permitted for a period of 3 years post performance (CSO approval)**
- **Terminations – consistent with FAR regulations**
  - Poor Performance
  - Other

Helpful Websites

- **DoD A-76 page:**
  - http://emissary.acq.osd.mil/inst/share.nsf
- **Navy Strategic Sourcing page:**
  - http://strategicsourcing.navy.mil/index.cfm
- **ESOL website:**
  - http://www.esol.navfac.navy.mil/
- **NAVAIR website:**
  - http://contracts.navair.navy.mil/solicitations/solicitations.cfm